

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUNGARD RECOVERY SERVICES, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
FLORISTS TRANSWORLD DELIVERY, INC.,	:	
Defendant.	:	NO. 98-CV-4815

MEMORANDUM AND ORDER

J. M. KELLY, J.

NOVEMBER , 1999

Presently before the Court is the Motion for Partial Summary Judgment of Plaintiff, Sungard Recovery Services, Inc. (“Sungard”). Sungard argues that it is entitled to summary judgment on the failure of Defendant, Florist Transworld Delivery, Inc. (“FTD”), to give written notice of termination the agreement between the parties and that it is entitled to damages resulting from unpaid fees on the three year extension of that agreement.

I. FACTUAL BACKGROUND

In August 1994 Sungard and Floral Network, a division of FTD, entered into an agreement by which Sungard would provide computer services in the event Floral Network’s own computers failed. The parties agreed Floral Network would make monthly payments to Sungard for this service, and that the Agreement would last until December 1, 1997. The parties further agreed the Contract would renew automatically for additional three year terms unless one party gave the other notice within six months of the term’s expiration. FTD admits that it did not give Sungard notice of termination of the Agreement by or before May 31, 1997, six months before the end of the Agreement’s term.

Sungard alleges FTD has failed to make its monthly payments since October 1997 and

has not acknowledged the Agreement automatically renewed for an additional three year term. Sungard therefore has sued both for compensatory damages and declaratory relief, seeking to recover the monthly payments and a declaration from the Court that FTD is bound under the Contract until November 30, 2000. FTD claims it cannot be liable for the damages Sungard demands under one part of a provision in the Contract that limits each party's liabilities, and has moved to dismiss the complaint in reliance on its interpretation of this provision. Sungard points to another area of the liability limiting provision as supporting its right to recover. The relevant portions of the provision are as follows:

LIABILITY AND INDEMNIFICATION. Each party shall be fully liable for all direct damages caused by its own breach of contract and other negligent and willful acts and omissions, and those of its employees and agents, in connection with the use of the Recovery Resources and any other matters relating to this Agreement. . . . Under no circumstances shall either party be liable to the other or any third party for lost revenues, lost profits, loss of business, or consequential or special damages of any nature, whether or not foreseeable.

(Contract ¶ D.4.)

Pennsylvania law requires that a court, when interpreting a contract, determine the parties' intent and give effect all of the contract's provisions. Department of Transp. v. Manor Mines, Inc., 565 A.2d 428, 432 (Pa. 1989); see also Western United Life Assurance Co. v. Hayden, 64 F.3d 833, 837 (3d Cir. 1995). A court should interpret the contract as a whole, and should interpret provisions of the same contract together. Atlantic Richfield Co. v. Razumic, 390 A.2d 736, 739 (Pa. 1978); see also Williams v. Metzler, 132 F.3d 937, 947 (3d Cir. 1997); Restatement (Second) of Contracts § 202(2) (1981). If a court should recognize that ambiguities exist or a portion of the contract conflicts with another, the court should attempt to construe the ambiguous or conflicting sections so that the main purpose of the contract is preserved. See In re

Binenstock's Trust, 190 A.2d 288, 293 (Pa. 1963); Fogel Refrigerator Co. v. Oteri, 137 A.2d 225, 233 (Pa. 1958) (“[O]ne part of a contract cannot be so interpreted as to annul another part.”); see also Keystone Fabric Laminates, Inc. v. Federal Ins. Co., 407 F.2d 1353, 1356 (3d Cir. 1969); Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1131 (3d Cir. 1969).

On FTD's Motion to Dismiss, the Court found that the two allegedly competing clauses in the liability limitation provision may be reconcilable: under the Contract, a breaching party might be liable for “direct” but not consequential damages. Further, the Court found the language the parties adopted might have intended “direct damages” to encompass the monthly payments FTD made to Sungard. The ambiguity of the phrase “direct damages” raised the possibility that Sungard might recover damages for breach of contract.

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FLORISTS TRANSWORLD DELIVERY, INC.,	:	
Defendant.	:	NO. 98-CV-4816

ORDER

AND NOW, this 21st day of January, 1999, in consideration of Defendant Florists Transworld Delivery, Inc.'s Motion to Dismiss (Document No. 6), and Plaintiff Sungard Recovery Services, Inc.'s response thereto, it is hereby **ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.

